

## Department of Veterans Affairs

## § 38.633

(h) *Decision by the Under Secretary for Memorial Affairs.* (1) A decision will be made on all complete applications. A request to inscribe a new emblem on a Government-furnished headstone or marker shall be granted if the Under Secretary for Memorial Affairs finds that the request meets each of the applicable criteria in paragraph (g) of this section. In making that determination, if there is an approximate balance between the positive and negative evidence concerning any fact material to making that determination, the Under Secretary shall give the benefit of the doubt to the applicant. The Under Secretary shall consider the Director of NCA's Office of Field Programs' recommendation and may consider information from any source.

(2) If the Under Secretary for Memorial Affairs determines that allowing the inscription of a particular proposed emblem would adversely affect the dignity and solemnity of the cemetery environment or that the emblem does not meet the technical requirements for inscription, the Under Secretary shall notify the applicant in writing and offer to the applicant the option of either:

(i) Omitting the part of the emblem that is problematic while retaining the remainder of the emblem, if this is feasible, or

(ii) Choosing a different emblem to represent the religious or functionally equivalent belief that does not have such an adverse impact.

Applicants will have 60 days from the date of the notice to cure any adverse impact or technical defect identified by the Under Secretary. Only if neither option is acceptable to the applicant, the applicant's requested alternative is also unacceptable, or the applicant does not respond within the 60-day period, will the Under Secretary ultimately deny the application.

(3) If the Under Secretary determines that the request should be denied and that decision is based wholly or partly on information received from a source other than the applicant, then the following procedure will be followed:

(i) A tentative decision denying the request will be prepared;

(ii) Written notice of the tentative decision accompanied by a copy of any

information on which the Under Secretary intends to rely will be provided to the applicant;

(iii) The applicant will have 60 days from the date of the written notice specified in subparagraph (ii) to present evidence and/or argument challenging the evidence and/or tentative decision; and

(iv) The Under Secretary will consider the applicant's submission under subparagraph (iii) and will issue a final decision on the request.

(4) The Director, Office of Field Programs, will provide the individual who made the request written notice of the Under Secretary's decision.

(Authority: 38 U.S.C. 501, 2404)

[74 FR 26096, June 1, 2009]

### § 38.633 Group memorial monuments.

(a) *Definitions of terms.* For the purpose of this section, the following definitions apply:

(1) *Group*—all the known and unknown dead who perished in a common military event.

(2) *Memorial Monument*—a monument commemorating veterans, whose remains have not been recovered or identified. Monuments will be selected in accordance with policies established under 38 CFR 38.630.

(3) *Next of kin*—recognized in order: Surviving spouse; children, according to age; parents, including adoptive, stepparents, and foster parents; brothers or sisters, including half or step-brothers and stepsisters; grandparents; grandchildren; uncles or aunts; nephews or nieces; cousins; and/or other lineal descendent.

(4) *Documentary evidence*—Official documents, records, or correspondence signed by an Armed Services branch historical center representative attesting to the accuracy of the evidence.

(b) The Secretary may furnish at government expense a group memorial monument upon request of next of kin. The group memorial monument will commemorate two or more identified members of the Armed Forces, including their reserve components, who died in a sanctioned common military event, (e.g., battle or other hostile action, bombing or other explosion, disappearance of aircraft, vessel or other

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vehicle) while in active military, naval or air service, and whose remains were not recovered or identified, were buried at sea, or are otherwise unavailable for interment.

(c) A group memorial monument furnished by VA may be placed only in a national cemetery in an area reserved for such purpose. If a group memorial monument has already been provided under this regulation or by any governmental body, e.g., the American Battle Monuments Commission, to commemorate the dead from a common military event, an additional group memorial monument will not be provided by VA for the same purpose.

(d) Application for a group memorial monument shall be submitted in a manner specified by the Secretary. Evidence used to establish and determine eligibility for a group memorial monument will conform to paragraph (a)(4) of this section.

(Authority: 38 U.S.C. 501, 2403)

**PART 39—AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES**

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**AUTHORITY:** 25 U.S.C. 450b(1); 38 U.S.C. 101, 501, 2408, 2411, 3765.

**SOURCE:** 75 FR 34005, June 16, 2010, unless otherwise noted.

**Subpart A—General Provisions**

**§ 39.1 Purpose.**

This part sets forth the mechanism for a State or Tribal Organization to obtain a grant to establish, expand, or improve a veterans cemetery that meets VA's national shrine standards of appearance that is or will be owned by the State, or operated by a Tribal Organization on trust land, or to obtain a grant to operate or maintain a State or Tribal veterans cemetery to